

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Date:

September 29, 2006

Legend

Taxpayer =

Subsidiary1 =

Subsidiary2 =

Newco =

Shareholder A =

Shareholder B =

Shareholder C =

State A =

State B =

Date 1 =

Dear Mr. :

This letter responds to your July 12, 2006, letter requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer is the common parent an affiliated group that files consolidated income tax returns. Taxpayer is a holding company that owns all of the membership interests in Subsidiary1 and owns all of the stock of Subsidiary 2. Subsidiary1 is a State A nonprofit, nonstock corporation that is taxed as a subchapter C corporation for federal income taxes. Subsidiary1 and Subsidiary2 are members of Taxpayer's consolidated group. Subsidiary1 leases property to Subsidiary2. Subsidiary2 sub-leases the property to the shareholders of Taxpayer and to other tenants.

Taxpayer has one class of common stock outstanding. The common stock is equally owned by Shareholder A, Shareholder B and Shareholder C. Taxpayer intends to complete a series of transactions to restructure its businesses including the conversion of Subsidiary1 to a State B for-profit company. State A law prohibits the merger or conversion of a State A nonprofit corporation into a State A or foreign state

for-profit corporation. State A treats certain foreign non-stock membership corporations like State A nonprofit corporations.

For what is represented to be a valid business purpose, Taxpayer proposes the following transaction (the “Proposed Transaction”):

- (i) Taxpayer will form Newco as a State B non-stock membership corporation and will contribute to Newco a nominal amount of assets in exchange for all of the Newco membership interests.
- (ii) In a statutory merger under the laws of State A and of State B, Subsidiary1 will merge with and into Newco, with Newco surviving.
- (iii) In a recapitalization transaction, Newco will convert from a State B non-stock corporation to a State B stock corporation by amending its certificate of incorporation to provide for the issuance of stock. Taxpayer will own all of the stock of Newco.
- (iv) Subsidiary2 will merge into Newco, with Newco surviving, in a reorganization that is intended to qualify under § 368(a)(1)(D) of the Code.
- (v) Subject to the approval of its Board of Directors, Taxpayer’s management anticipates that Taxpayer will elect under § 856 of the Internal Revenue Code (the Code”) to be treated as a real estate investment trust (REIT) effective Date 1. In connection with Taxpayer’s planned election, Newco will be treated as a qualified REIT subsidiary under § 856(i)(2) of the Code.

Representations

For purposes of the Proposed Transaction, Subsidiary1, Subsidiary2 and Newco are collectively referred to as the “Transferors”. Taxpayer and Newco are collectively referred to as the “Transferees”. “Equity interests” means stock and/or membership interests of the respective owner. Taxpayer has made the following additional representations with respect to the Proposed Transaction:

- (a) In each instance described above, the fair market value of the Newco equity interests received by Taxpayer will be approximately equal to the fair market value of the Subsidiary1 and Newco equity interests surrendered in the exchanges.

- (b) There is no plan or intention by Taxpayer to sell or otherwise dispose of its Newco equity interests received in the transaction, except for dispositions in connection with Taxpayer's election to be treated as a REIT.
- (c) Immediately following the reincorporation of Subsidiary1 and the recapitalization of Newco, Taxpayer will own all of the outstanding Newco stock and will own such stock solely by reason of its ownership of Subsidiary1 prior to the recapitalization of Newco.
- (d) Newco has no plan or intention to issue additional shares of its stock following the transaction.
- (e) Immediately following consummation of the transaction, Newco will possess the same assets and liabilities, except for assets used to pay expenses incurred in connection with the transaction, as those possessed by Subsidiary1 immediately prior to the transaction.
- (f) At the time of the transaction, Subsidiary1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire an equity interest in Subsidiary1 or in Newco.
- (g) Newco has no plan or intention to reacquire any of its stock issued in the transaction.
- (h) Newco has no plan or intention to sell or otherwise dispose of any of the assets of the Transferors acquired in the transaction, except for dispositions made in the ordinary course of business and for dispositions in connection with Taxpayer's election to be treated as a REIT.
- (i) Following the transaction, Newco will continue the historic business of Subsidiary2 or use a significant portion of Subsidiary2's historic business assets in a business.
- (j) The shareholders, members, Transferors and Transferees will each pay their respective expenses, if any, incurred in connection with the transaction.
- (k) The Transferors and Transferees are not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(a) of the Code.
- (l) The fair market value of the assets transferred to the Transferees by the Transferors each equals or exceeds the sum of the liabilities assumed by the Transferees in each instance described above.

- (m) The liabilities to be assumed (as determined under § 357(d)) in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) No gain or loss will be recognized by the Transferors on the transfer of property to the Transferees in exchange for the Transferees' equity interests and assumption of liabilities, in each instance described above.
- (2) No gain or loss will be recognized by the Transferees on the receipt of property in exchange for their equity interests, in each instance described above.
- (3) The basis of each asset received by the Transferees in exchange for their equity interests will equal the basis of each asset in the hands of the respective Transferor immediately before the transfer, in each instance described above.
- (4) The holding period of each asset received by each Transferee will include the period during which the respective Transferor held the asset.

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether Taxpayer's REIT election will be a valid election, (ii) whether Newco will be a qualified REIT subsidiary; and (iii) the federal income tax effects of the transaction under Treasury Regulations at § 1.1502-13 with regard to intercompany obligations, § 1.1502-19 with regard to excess loss accounts or § 1.1502-75(d)(1) with regard to termination the consolidated group.

Procedural Statements

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the ruling letter.

\ In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lewis K Brickates
Chief, Branch 4
Associate Chief Counsel
(Corporate)